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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SPENCER D. MOSS,

Defendant and Appellant.

2d Crim. No. B155138
(Super. Ct. No. 2001027435)
(Ventura County)

ORDER MODIFYING OPINION AND
DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion herein filed on September 8, 2003, be modified as follows:

1. The paragraph commencing at the bottom of page 10 with "We also reject" and ending at the top of page 11 with "advisory counsel in all serious cases[.]" is deleted and the following paragraphs are inserted in its place:

We also reject appellant's argument that the trial court should have appointed advisory counsel after his library privileges were terminated. Appellant did not directly request advisory counsel to assist him in the trial, although there was some discussion about obtaining a legal assistant to assist him in obtaining information from the library.

Even if we construe appellant's remarks on this subject as a direct request for advisory counsel, he was not entitled to such counsel as a matter of right. (*People v. Clark* (1992) 3 Cal.4th 41, 111.) Advisory counsel and other forms of "hybrid" representation are not constitutionally guaranteed and the decision not to appoint such counsel is reviewed for abuse of discretion. (*Ibid.*) Appellant faced a fairly straightforward charge of passing a check with insufficient funds under a statute "which presented no significant construction problems on the facts of this case." (*Ibid.*) The court did not abuse its discretion in allowing him to proceed to trial unassisted.

We are not persuaded that the termination of appellant's library privileges, which resulted from his own misconduct, changes this result. He complains that advisory counsel would have obviated the difficulties posed by his restricted library access. But so would his compliance with jailhouse procedures. Appellant knowingly and intelligently chose to waive his right to appointed counsel and intentionally engaged in conduct at the jail that necessitated higher security measures.

We are also convinced that any error in denying advisory counsel was harmless. It is apparent from the record that appellant was determined to control his own trial. It would be purely speculative to conclude that access to advisory counsel would have significantly changed his strategy or the evidence presented during the trial, and it is not reasonably probable he would have obtained a more favorable result. (*People v. Crandell* (1988) 46 Cal.3d 833, 863-866, overruled on other grounds in *People v. Crayton* (2002) 28 Cal.4th 346, 364-365.)

There is no change in judgment.

Appellant's petition for rehearing is denied.